STATES OF JERSEY

STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MS. X AGAINST THE MINISTER FOR THE ENVIRONMENT AND THE INFRASTRUCTURE AND ENVIRONMENT DEPARTMENT REGARDING THEIR RESPONSE TO A COMPLAINT AND SUBSEQUENT INVESTIGATIONS CONDUCTED

Presented to the States on 26th June 2025
by the Privileges and Procedures Committee

STATES GREFFE

REPORT

Foreword

In accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for the Environment and the Infrastructure and Environment Department regarding their response to a complaint and subsequent investigations conducted.

Chair, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

2nd May 2025

Complaint by Ms. X against the Minister for the Environment and the Infrastructure and Environment Department regarding their response to a complaint and subsequent investigations conducted.

Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982

Present

Board members –

G. Crill (Chair)
S. Rowles
A. Ahmed

Complainant –

Ms. X

Neighbours of the complainant

Representatives of the Minister for the Environment –

K. Whitehead, Group Director for Regulation, Infrastructure and Environment Department

A. Marx, Head of Development and Land, Infrastructure and Environment Department

R. Briggs, Regulation Standards Senior Officer – Housing and Nuisance, Infrastructure and Environment Department

States Greffe –

L.M. Hart, Deputy Greffier of the States
H. Roche, Senior Secretariat Officer, Specialist Secretariat
C. Tucker, Secretariat Officer, Specialist Secretariat
E. Patterson, Secretariat Officer, Specialist Secretariat

The Hearing was held in public at 10.30 a.m. on 2nd May 2025, in the Blampied Room, States Building.

1. Opening

1.1 The Chair opened the Hearing by introducing the Board and setting out its remit. He outlined the process which would be followed and clarified that the Board would only uphold a complaint if it felt that the decision which had given rise to the complaint was contrary to law, unjust, oppressive or improperly discriminatory, was based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts, or was contrary to the generally accepted principles of natural justice (Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982).

1.2 The Chair stated that the Hearing was not a trial, but an examination of the complaint. Those present would be entitled to ask questions and express their views with the aim of eliciting the facts and clarifying any doubts or misunderstandings. The Chair reiterated that the Hearing was not an examination of Northern Leaf's business or behaviour, but was strictly limited to considering the complaint insofar as it related to the Infrastructure and Environment Department.

2. Complainant's case

2.1 The Board noted that the complaint related to the Infrastructure and Environment Department's (the Department's) handling of the retrospective planning applications in respect of Northern Leaf (Licensed cultivator and processor of pharmaceutical grade cannabis), Field MY770, Retreat Farm (the site), La Rue des Varvots, St. Lawrence, and of the Department's consideration of the statutory nuisance complaints in relation to Northern Leaf's activities on that site.

2.2 Ms. X advised that the complaint centred around the Department's handling and lack of regulation in respect of a number of retrospective planning applications made by Northern Leaf, together with Enforcement and Noise Abatement Notices which had been issued to the company. She added that the original agricultural nature of the site had changed beyond recognition, and it was no longer in keeping with that use, but instead resembled an industrial zone with associated noises and emissions. Ms. X questioned why Northern Leaf had been able to operate under an agricultural banner when they were clearly a pharmaceutical enterprise. The medicinal cannabis industry was hugely consumptive of water and energy, and she implied that the Regulator had failed to ensure that the company had appropriate abstraction and discharge licences or to investigate whether fertilisers or pesticides were being stored or utilised on the site. Ms. X added that the current Chief Minister had been keen to promote the pharmaceutical grade cannabis industry in the Island, and questioned whether the Regulator was being prevented from ensuring that the site was complicit with the law by Government Ministers. She claimed that, had the previous Minister for the Environment and the Regulator completed thorough due diligence from the outset, the current situation could have been avoided.

2.3 Ms. X gave a brief history of the Noise Abatement Notices which had been issued to Northern Leaf by the Department. Initial complaints were raised by neighbours in January 2022, with regard to the noise produced by the generators on the site which were powering the chillers. This had resulted in the first formal Noise Abatement Notice (reference WK/020220100) being issued to Northern Leaf in

April 2022, under Article 2(1)(h) of the Statutory Nuisances (Jersey) Law 1999, with a 22-day compliance period. The Notice was not complied with until the site operators had switched to a new electrical substation in August/September 2022 and the generators had been turned off. Whilst the generators had been turned off, it was made clear that the noise emanating from the chillers had previously been masked by the noise from the generators and continued to be evident. Further noise complaints were raised by neighbours in September 2022, relating to the chillers on the site, which had led to the eventual issuance of a second Noise Abatement Notice (reference WK/0202231382) in April 2023, this notice had an 84-day compliance period, expiring on 30th June 2023. On 29th June 2023, the complainant was informed that Northern Leaf had approached the Department requesting an additional 8 weeks to undertake the work necessary to comply with the notice, due to the significant mitigation measures required to abate the nuisance. The Department subsequently granted Northern Leaf an 8-week extension, which was not provided for within the Statutory Nuisances (Jersey) Law 1999 (the Law). The lack of specific provisions within the Law for this extension was acknowledged by the Department, and correspondence was sent to the relevant parties to ensure that no criminal proceedings were instigated for non-compliance during this 8-week period. The informal extension had expired on 28th August 2023, at which point Ms. X claimed the noise had still not abated and it was understood that the Enforcement Notice had been sent to the Law Officers' Department for further action to be considered. Ms. X advised that the incessant noise of the chillers had had a detrimental impact on her life and that of the Retreat Farm neighbours, who were no longer able to open windows, sleep properly or enjoy the outside areas of their homes. Ms. X explained that it had taken the Directorate 2 years to concede that the chillers, under the Planning and Building (General Development) (Jersey) Order 2011, were unlawful, despite clear evidence to clarify this.

2.4 Ms. X stated that the Department had maintained that the pungent odour emanating from the site met regulatory levels, following a number of 'sniff' tests and that, had the Department investigated further, it would have come to light that there were no carbon filters on the vents from which odours emitted from the site. She considered that this had not been addressed by the Chief Officer of the Department as part of the stage 3 internal complaint process, despite the fact that the odour was impacting the lives of Ms. X and other residents to the extent that it was causing headaches and nausea together with general ill-health and also preventing the enjoyment of their homes.

2.5 The Board's attention was drawn to the 16 retrospective planning applications for unauthorised operational development by Northern Leaf at Retreat Farm, which Ms. X advised had also had a significant and detrimental impact on her life and the lives of neighbours. She added that only the 2 most recent retrospective applications had been rejected by the Planning Committee to date. Ms. X claimed that a number of the approved retrospective planning applications had subsequently not complied with planning regulations, or with the conditions attached to the permits, in terms of operating hours and noise limits of machinery. She noted that no enforcement action had been taken by the Department in this respect.

2.6 Ms. X gave a brief history of the Enforcement Notices which had been issued to Northern Leaf by the Department. She referred to the unlawful installation of climate control and air filtration/chilling plant machinery (the chillers) on the site. It had initially been advised by the Department that Northern Leaf did not require planning permission under the Planning and Building (General Development) (Jersey) Order 2011, as the chillers would be situated within a building (greenhouse) which had been approved under planning application reference No. P/2021/1705. The Department had subsequently, after a 2 year delay, decided that the installation of the chillers could not be considered as permitted development as they had not been installed inside the previously approved building, and were also not included within the drawings of planning application reference No. P/2021/1705, which had been approved in March 2022. Ms. X questioned whether the Department had deliberately delayed this conclusion in order to allow the company to continue with its operations. She added that Northern Leaf appeared to have been given special treatment by the Government from the onset of their activities on the site, given that they had not supplied the required assessments in order to receive a licence to grow medicinal cannabis, which would have included an Environmental Impact Assessment. In October 2023, the Department had requested that the Company submit a retrospective application for the construction of a walled compound containing the chillers. Northern Leaf had failed to submit an application, which had resulted in the issuance of Enforcement Notice reference No. ENF/2023/00004 in January 2024. Northern Leaf was subsequently advised that the block work walls should be demolished, the plant machinery should be deconstructed, and all subsequent debris and materials should be removed from the land. In February 2024, Northern Leaf submitted an appeal against the Enforcement Notice (reference No. ENF/2023/00004), the appeal was upheld in July 2024, and the compliance period extended by 6 months, from 29th August 2024. The Company submitted a retrospective planning application in respect of the block wall, which was subsequently refused by the Department under delegated authority in September 2024. A further Enforcement Notice (reference No. ENF/2024/00017) in respect of additional unauthorised developments had been issued on 19th September 2024, following the refusal by the Planning Committee of a retrospective application on 5th September 2024. In September 2024, Northern Leaf had requested a Royal Court judicial review of the Minister's decision against Enforcement Notice No. ENF/2023/00004, which had resulted in the adjournment of an appeal hearing for Enforcement Notice No. ENF/2024/00017.

2.7 Having set out the relevant background information, Ms. X stressed that she felt that the Department had assisted Northern Leaf in making retrospective planning applications, and had shown a lack of regulatory professionalism in dealing with the many complaints made by herself and residents against the operational aspects of the Company. Ms. X referred to the dismissive attitude and failure of the Department to regulate in a professional and constructive manner for over 3 years. She suggested that her stage 3 complaint made against the Department had not been investigated thoroughly or independently, and noted that the Chief Officer of the Department, who had conducted the stage 3 review had a clear conflict of interest, given that he had been included in all previous electronic mail complaint correspondence between June 2020 and May 2024.

2.8 Ms. X stated that Northern Leaf had been allowed to install machinery prior to gaining planning permission, failed to conform to lawful noise regulations or to complete a noise assessment. She noted that, during site visits by planning officers, they had failed to spot the very obvious industrial machinery that did not benefit from planning permission. Ms. X claimed that the Department had also failed to enforce any Regulations on the company or issue any penalties in respect of the breaches of the formal notices and on the site itself. Ms. X. requested that the Board consider the concerns raised with the Department and the many subsequent complaints made, which dated back to 2019, none of which had been resolved. She concluded that it was the responsibility of the Minister for the Environment and the Department's regulatory officers to enforce Regulations which had been established to protect the public of Jersey.

2.9 The Board was addressed by the neighbours of Northern Leaf who detailed the detrimental impact that the noise, odour and unauthorised development had had on their lives and enjoyment of their homes. They considered that there had been a persistent failure to ensure systems were in place to control noise and that the 'sniff' test in relation to odour complaints was ineffective. The collective feeling was that neighbours were not receiving the support of the Department, and that there was little understanding of the impact that the issues had caused, and that this was in breach of their legal rights.

3. Minister's case

3.1 The Board was informed that the Department's response would address 2 processes; Statutory Regulation requirements, which followed a separate legal framework, and Customer Feedback handling, which was managed through its internal complaint process known as the Customer Feedback Management System (CFMS). Complaints which were handled through CFMS specifically addressed customer service concerns, while statutory regulation outcomes fell outside of the scope of the complaints process. The Department confirmed that the Northern Leaf site had been the subject of investigation by the Regulation Directorate for a significant timeframe extending from early 2023 to the present date.

3.2 The Department advised that the complaints process had been exhausted in line with the Customer Feedback Policy, in respect of the complaint from Ms. X, which had been logged via the CFMS on 27th November 2024. The complaint had raised concerns regarding the Department's apparently dismissive attitude of neighbours' unease, failure to address reported odour issues in any comprehensive manner and failure of the Department to regulate against Northern Leaf in a professional and constructive manner for over 3 years. An acknowledgement had been sent to Ms. X, advising that the Department would investigate the concerns raised, regarding professional standards and attitude of the referred staff members. Due to the seniority of the staff members concerned, the complaint was automatically escalated to stage 3 of the complaints process, in line with Customer Feedback Policy. Two complaint status updates and extension due dates were subsequently sent to Ms. X via electronic mail on 11th and 20th December 2024. The Stage 3 Complaints Panel reviewed and carefully considered the concerns raised by the complainant together with the evidence and information provided by the Director of the Regulation Directorate.

3.3 The Stage 3 Complaints Panel findings were shared with the complainant in a response letter dated 7th January 2025, and concluded that the Regulation Directorate had taken, and continued to take a robust approach to the way it delivered customer service, and that the Regulation team was delivering a high quality and professional regulatory service. The Panel had concluded the following -

- odour - the Regulation team had provided the complainant with a full explanation and rationale on the odour issues addressed to the Department;
- dismissive attitude of neighbours' concerns - the Regulation team had managed the concerns raised relating to Retreat Farm in a professional and empathetic manner, to the extent that every concern had been listed and responded to within the Consolidated Regulatory Report. The Panel had also noted that significant professional resources had been dedicated to working on this issue as a commitment to dealing with and responding to the concerns raised by the neighbours; and
- 'failure to act now' - the explanations and background information that had been provided to the complainant regarding the decisions made by the Minister and the Planning Committee was deemed satisfactory. The Panel also communicated to the complainant their understanding that the site continued to be monitored, and that officers would act under the bounds of the applicable Laws.

3.4 The Board was apprised of the steps taken by the Department concerning the complaints raised by Ms. X in relation to the odour and noise emitting from the site. Ms. R. Briggs, Regulation Standards Senior Officer - Housing and Nuisance, Infrastructure and Environment Department, advised that unscheduled visits had been made, and odour 'sniff' tests undertaken, from proxy locations within the vicinity of the site. An incredibly high statutory nuisance threshold existed which examined frequency, duration and impact. The odour had been assessed on multiple occasions where it had been established that the nuisance threshold had not been met. The Department acknowledged that a potent odour existed but added that, on the majority of occasions, the threshold had not been met due to the infrequency of the odour.

3.5 In response to a question from the Board with regards to the 'sniff' test, Ms. Briggs advised that a nuisance would exist where it was deemed to be at a level above annoyance and was having a detrimental, significant impact on a member, or members, of the public. Guidance from the United Kingdom (UK) Institute of Air Quality Management and from the UK Government Department for Environment, Food and Rural Affairs around how to assess odour had been applied to make independent judgments. It was noted that this applied UK case Law which assessed how the average person on the 'Clapham omnibus' would be affected by the issue. Odour assessments would not normally be undertaken by a single officer as the results could be subjective. There was no qualitative testing method, and the character, frequency, duration, pleasantness and intensity of the odour would be assessed in order to reach a determination. Multiple assessments would be undertaken, and if, after 3 visits, at times indicated where the nuisance was likely to occur, the nuisance threshold had not been demonstrated, the case would be closed. It was noted that that the odour had been assessed 5 times within a 12 week period. Ms. Briggs confirmed that economic impact was not considered in the assessment of nuisance. Should the issuance of a formal Abatement Notice be deemed necessary, this would be authorised by the Head of the Environment and Consumer Protection Department.

3.6 The Board discussed the lack of filters at the site and Mr. Marx explained that the Department did not have details of the filtration equipment, as there had been no planning application attached to their installation, which would have required the specifications of the system to be detailed. Without this, there was no mechanism or justification to require this information. Documentation dating back to 2023 had indicated that the Department had verified that a filtration system was in place. It was believed that some of the carbon filtration system was new (within the last 4 weeks at the time of the hearing), together with 4 chimney vents and a larger filtration system which filtered the air for the whole of the facility.

3.7 Ms. K. Whitehead, Group Director for Regulation, Infrastructure and Environment Department, advised that the Department had arranged mediation for the complainant, residents and Northern Leaf with regards to the odour issue. This was a voluntary exercise which did not go ahead as the Company had decided not to participate. Ms. Whitehead added that alternative dispute resolution had been pursued for some time and all of the neighbours had voluntarily agreed to participate in this, as well as the Parish Connétables and Deputies, but it did not progress because the previous owners of Northern Leaf had disengaged. Ms. Whitehead clarified that the offer of mediation remained, and that the Department were prepared to arrange independent facilitators for this, if all parties were willing to participate.

3.8 The Board acknowledged that 2 noise Abatement Notices had been issued by the Department and that the first Notice had been complied with once the generators had been switched off and replaced by an electrical substation. Ms. Briggs advised the Board that, as the second Noise Abatement Notice issued in April 2023, was being actively pursued with the Law Officers' Department for non-compliance, the Department was unable to discuss this further. She stated that the noise associated with the operation of the chillers had been deemed as a statutory noise nuisance which had not been abated within the statutory or extended timeframe of the Abatement Notice. With regards to any extension of compliance period, Ms. Briggs advised that the Department would assess the level of works to be completed, then apply the compliance period to allow for the mitigation works. If there was a failure to comply, the Regulator would refer the matter first to H.M. Attorney General to decide whether it was in the public interest to pursue the matter as a prosecutable offence. Only then would a confidential case be opened up, which would be a discussion between the person who had been served the Abatement Notice, the Regulator and the Law Officers' Department. In response to a question from the Board in relation to all nuisance complaints, the Department confirmed that it would use multiple officers to verify impact statements, and to consider the matter from the complainants' perspective. She added that statutory nuisance was not a Jersey principle, it was a UK principle, which relied upon various examples from Case Law to inform decisions.

3.9 The Board was apprised of the steps taken by the Department in relation to the complaints raised by Ms. X concerning the retrospective planning applications made by Northern Leaf in respect of unauthorised operational development, and the Company's compliance with two Enforcement Notices. Mr. A. Marx, Head of Development and Land, Infrastructure and Environment Department, advised that, in order to ensure that all interested parties, including the claimant, were provided with current information regarding the site and relevant regulation activities, the Regulation Directorate had issued a Consolidated Regulation Report on 18th August 2023. Subsequently, a further 12 updated reports had been issued, with the last one being in April 2025. In addition to the consolidated reports, ad-hoc enquiries had been dealt with via electronic mail, which had included a considerable number of updates to Ms. X. The consolidated reports and electronic mail correspondence had been circulated to the Board for its consideration. Ms. X explained that she did not consider the Consolidated Report to be factually correct and that it contained misinformation.

3.10 The Board discussed the high number of previous retrospective planning applications which had been made by the Company, and Mr. Marx confirmed that most of the current pending Northern Leaf applications were also retrospective. He stated that an overall plan for the Northern Leaf operation would be optimal but had not been delivered.

3.11 Mr. Marx advised that the delay in the decision regarding whether the chillers were permitted development under the General Development Order 2011 had been due to their location within the eastern glasshouse on the site. It was subsequently confirmed that additional chillers had been installed after demolition of the glasshouse, and therefore were not located within the confines of a building, and consequently, following a long review, were not considered as permitted development nor as having the benefit of planning permission under planning application No. P/2021/1705. This had been confirmed in the Consolidated Regulatory Report. The Company had been issued with a warning letter inviting them to apply for planning permission for the chillers, which had not been forthcoming, and had subsequently resulted in the Enforcement Notice being served.

3.12 In response to a question from the Board, Mr. Marx advised that the operations conducted by Northern Leaf were classed as agricultural, rather than industrial. Mr. Marx advised that the permission for the site pertained to agricultural activities and that was regarded as the primary lawful use, which meant that an activity such as processing may sometimes be regarded as ancillary to that main use and did not necessarily need specific permission. Turning to planning conditions, Mr. Marx advised that there was a requirement in the Planning and Building (Jersey) Law 2002 as to how they should be applied. Conditions must be reasonable, they must relate to the activities on-site, and were usually applied to mitigate possible harm or impact on amenity, but also to overcome objections to development. There were no responsibilities, in terms of the Law, for the Regulator to formally monitor the compliance with planning conditions, although the majority of applicants would comply. It was not expected that the public monitored planning conditions, but if non-compliance was reported to the Department, this would instigate a compliance investigation.

3.13 Mr. Marx stated that every application for planning permission was determined in terms of planning considerations without external influence by Government. Politicians were able to make representations in respect of any planning application, as were members of the public, and formal consultations could be submitted by Parish officials. He noted that States Members could not influence planning applications. Ms. Whitehead also confirmed that consideration of her Regulation work was not subject to political interference.

3.14 The Board discussed the redactions process undertaken by the Department in relation to representations made by members of the public. Ms. X expressed some concern that her comments had been either heavily redacted or not uploaded to the Planning website whenever applications in relation to the site were processed and she questioned whether this had been deliberate. She explained that other residents had submitted identical comments which had not been redacted and were posted on to the planning portal. Ms. Whitehead explained that redactions on the planning registry were made in accordance with the Data Protection (Jersey) Law 2018. There was a specific set of criteria on the planning register determining what was redacted and why. She added that she would be content to review any redactions that the complainant had indicated were inconsistent. The redaction process was undertaken by a team of 7 colleagues, and what might pass varied from person to person. Colleagues were not instructed as to how to redact certain documents or representations from specific interested parties, and the Department refuted any suggestions that selective redaction was practised within the Department.

3.15 The Chair referred to the composition of the Stage 3 Complaints Panel and asked about the selection process, and whether the Panel was convened in accordance with established Departmental or Government wide procedure. Ms. Whitehead explained that the procedure was Government wide, and part of the Customer Feedback Policy (the Policy), The Policy stated that the Chief Officer of the relevant Department would review Stage 3 complaints, although this could be delegated to a Director. The Panel would usually include the Department Head of Governance and the Department Governance Manager and Customer Services Manager, who were independent from the Regulation Directorate. With regards to the claim that a conflict of interest existed, Ms. Whitehead noted that, whilst the Chief Officer might have been included in correspondence, he would not have become involved with the 'business as usual' operations of the Directorate, which enabled him to consider the Stage 3 complaint. It was noted that the current Chief Officer had previously held the role of Group Director which would have enabled him to comment on earlier correspondence, in relation to this complaint.

3.16 In concluding, Ms. Whitehead stated that the Regulation Directorate had attempted to address all of the concerns raised by Ms. X and her neighbours, using a substantive amount of staff resources. The Consolidated Regulation Report was compiled by up to 10 officers on every occasion it was issued, although the report was signed off and issued in her name. Ms. Whitehead added that she appreciated the fact that the neighbours did not feel that the situation had been addressed to their satisfaction, but that every email and complaint had been answered and addressed to the best of the Directorate's ability. She considered that the Directorate had conducted itself in good faith, with both the residents and Northern Leaf, to try to bring this matter to a satisfactory conclusion within the bounds of the Law. Ms. Whitehead acknowledged that regulators often corresponded in an objective and neutral tone and that this may have contributed to residents concluding that officers were not sympathetic to their situation, but she advised that she had found a number of the personal comments from the neighbours quite hurtful. She reiterated that mediation between all the parties concerned would be beneficial.

3.17 In closing, Ms. X reiterated the need for the Department's practices to be reviewed in light of the lack of action in addressing residents' concerns since 2021. She referenced the recommendations made by a previous Board in relation to the activities on the site by a former owner, which had seemingly been ignored and highlighted the serious concerns residents had about the long-term health impact on those living in close proximity to Northern Leaf's operations. Other residents expressed disquiet that the test levels for noise and smells appeared arbitrary and subjective, especially the so-called 'sniff test' and questioned why there had not been any effort to measure the inhalable particulate matter, given residents had reported sticky residues on their windows. There was also a degree of frustration expressed in relation to the Department's perceived reluctance to act on the Company's non-compliance and that all of the retrospective planning applications which had been submitted by Northern Leaf were devoid of required factual information, with inaccurate noise reports. It was noted that some positive remedial action had been implemented by the current owner and residents expressed disquiet that they were reliant on the goodwill of the Company, rather than the Department, to prioritise their interests.

4. Closing remarks

The Chair thanked those present for attending and for their frank and open participation. He highlighted the limited scope of the Board's considerations, but also advised that it was within its gift to make recommendations where appropriate. The Chair indicated that a report of the Hearing would be prepared in due course, which would be circulated to both parties to verify the factual content. Ultimately, the report and findings would be presented to the States Assembly by the Privileges and Procedures Committee and the Minister for the Environment would have 12 weeks from the publication of that Report to respond in the States Assembly, in accordance with Standing Order 68AA of the Standing Orders of the States of Jersey.

5. Findings

5.1 The Board commenced by considering the issues pertaining to the complaint handling process. It was noted that the Government's 3 stage complaints process could be escalated at the third stage to the Department's Chief Officer who was able to be part of the review panel or could refer the complaint to another Chief Officer, a delegated member of the Department's Senior leadership or an independent third party if appropriate. The Board noted that the specific complaint had centred on "the dismissive attitude and failure of the department to regulate in a professional and constructive issue manner for over 3 years" regarding Retreat Farm. From a governance perspective, given the Chief Officer was ultimately responsible for the conduct of the staff concerned and had at some point, been involved in the complaint himself, the Board agreed that it might have been more appropriate for him to step away from the matter and refer it to an independent third party to adjudicate. However, it was also mindful that in his role, he should be able to distinguish between his personal opinion and his team's behaviour and judge the situation objectively. The Board rejected the suggestion that the Chief Officer of Planning had been conflicted when considering the Stage 3 complaint.

5.2 However, the Board was aware that the inherent nature of the process, in that it was conducted internally, could give rise to a sense of the matter being concealed or suppressed, and it therefore recommended that in future, when any complaint reached Stage 3 (across the entire Government not just this Department) the first element of any response to the complainant should be a declaration of any conflicts of interest, in order that the person making the complaint could be assured that there was no bias. Furthermore, if there was an overriding conflict of interest, it was expected the matter would be referred to an independent third party.

5.3 The Board was concerned about the lack of consistency in the redaction process and questioned why there was not a standardised approach, particularly as, in this instance, it had led Ms. X to suspect that her submissions were being ‘managed’. The Board recognised that this had exacerbated a sense of mistrust between the neighbours and the Department. The Board recommended that a redaction policy should be published by the Department.

5.4 Addressing the way in which complaints about odours and noise emanating from the site had been handled, the Board acknowledged that the matter had been complicated by the limited powers available to the Department under the existing Statutory Nuisances (Jersey) Law 1999. The Department was only able to react to an application or a breach and could not instigate action. The Board considered that there were certain mechanisms missing in the Law, which would have provided greater clarity and structure for all concerned and obviated some of the issues which had arisen in this case, most notably in relation to standard operating procedures and consistency of approach. The Board concurred that it was not unreasonable for the neighbours to expect that any commitments in relation to the timelines for compliance measures should be met.

5.5 In relation to the odours, the Board considered that the current burden of proof was set outside of reasonable levels. The Board noted that other local cannabis growers had been required to submit environmental impact assessments before they were able to commence production, and those assessments would have informed what they could and could not do and required the installation of filters and the encasement of their chillers. As the Company had developed its operations incrementally, these conditions had not been imposed, despite the fact that, unlike the other cannabis farms in Jersey, this one was in extremely close proximity to residential properties.

5.6 The Board acknowledged that the Statutory Nuisances (Jersey) Law 1999 had enabled the Department to impose stricter conditions but that it had not assuaged the neighbours’ other concerns. Given the intensity of the complaints, the lack of urgency displayed by the Department had been questionable. The Board struggled to understand how, when the Department had explained that the threshold for odours was somewhat nebulous and indefinable, it could be claimed the smells did not meet that ‘threshold’. It was noted that Article 2(1)(e) of Law, stated that matters which constituted a nuisance included “any dust, steam or smell or any other effluvia arising from, or emanating from industrial, agricultural, trade or business premises or resulting from processes conducted on such premises and prejudicial to health or nuisance ” and under Article 2(1)(f) “any accumulation or deposit which is prejudicial to health or a nuisance”. The Board agreed that the accumulation or deposits of residue on windows could have provided a more tangible test level than the ‘sniff test’ which had been applied. The source of the smell was not contested and there was clearly some prejudice to health, given the testimonies of the neighbours, so it appeared nonsensical to have extended the measurement period, especially when so many neighbours had stated it was a nuisance. The Board concluded that it had been unreasonable of the Department to have taken so long to take any action in respect of the smell, given the evidence available. The fact that there were not precedents should not have prevented action being taken and the reliance on the so-called ‘Clapham Omnibus’ test was poorly judged; Jersey was not the same as London, and there were other considerations which should have been applied, taking account of the context of the site, as the Department often did when determining applications in urban areas of St. Helier compared to a more rural setting. It was noteworthy that not one submission had been received in support of the smell by those who lived within its range, which suggested even the Clapham Omnibus passengers would probably not wish to live in its vicinity.

5.7 The Board reflected on the complaint which Ms. X had made against the Department in relation to misinformation and failure to provide information in a timely fashion. The Board acknowledged that, in some instances, such as when confirming the water abstraction permissions in 2023, it had necessitated freedom of information requests by the neighbours to establish an adequate understanding of the situation. Further, the compromises regarding the removal of the chimneys and the extension of the enforcement order until September appeared to the neighbours to offer appeasement to the Company, despite the fact that such concessions prolonged the detrimental impact on neighbours for another Summer. The Board concurred that lengthy delays, extensions of compliance deadlines and poor communication had compounded the impression that the Department had prioritised the Company’s interests over those of the complainant and her neighbours.

5.8 The Board reflected that the Department had failed to put the neighbours, as the injured parties, at the heart of their considerations. Accepting the limitations of the Law, they could still have given them the benefit of the doubt, applied a degree of urgency and acknowledged that the complaints about odours had been made by numerous households over a 4-year period. The emphasis on continued monitoring simply exacerbated the frustrations of the complainants as there was clearly an ongoing issue that was being reported and reaffirmed by them repeatedly, but there appeared to be no proactive response from the Department. The Board considered it unacceptable that the Department had simply extended the monitoring in order to meet a threshold that had already been acknowledged as unworkable. The Board agreed that it was vital the Department had clear guidelines and clearly the ‘sniff test’ was not viable. Mindful that it should not be the responsibility of officers to devise threshold levels, the Board suggested that the Department should look to the Courts to provide a valid test from which a usable precedent could be set.

5.9 The Board suggested the implementation of a traffic light system so that when a complaint about noise or smell was received, it would be investigated and, if upheld, a notice would be served. That way any company or property owner would be alert to the fact that they had a duty to review their activities. Should there be no action taken by way of response, then the period of notice, the compliance period and the monitoring period should be shortened to make certain the matter was addressed.

5.10 In relation to the retrospective applications, the Board was concerned that the degree of flexibility applied had given rise to a perception that the Department favoured the Company or were willing to allow them greater latitude. The Board sympathised with the Department, which had been constrained by the fact that the primary lawful use of the site was classified as agricultural and therefore any processing activities were subservient to that in Law. However, the Board was of the view that responses could have been swifter when the Department did have the ability to take action, and the perceived reluctance to address issues had been amplified by the incremental evolution of the Company's operations, compounded by the reliance on retrospective applications. The Board was heartened that the Department appeared to have exerted greater influence over the activities on site since Mr Marx's appointment.

5.11 The Board determined that the Department had taken an unreasonable amount of time to make the noise abatement order and to act on the odours. The Board recommended that when considering compliance notices and extended timeframes for implementation, the Department should give equal consideration to those impacted by the lack of compliance as they did to the practical implications for the company or property owner concerned.

6. Summary

6.1 The Board upheld Ms. X's complaint in accordance with Articles 9(2)(a)-(e) of the Administrative Decisions (Review) (Jersey) Law 1982. It considered that the Department's actions –

(a) were contrary to law;

(b) were unjust, oppressive or improperly discriminatory, or in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;

(c) were based wholly or partly on a mistake of law or fact;

(d) could not have been made by a reasonable body of persons after proper consideration of all the facts; and

(e) were contrary to the generally accepted principles of natural justice

6.2 In applying Article 9(2)(a) the Board reasoned that the existing Statutory Nuisances (Jersey) Law 1999 was weak and did not provide adequate thresholds by which complaints could be measured.

6.3 In applying Article 9(2)(b) the Board considered that the application of the 'sniff test' threshold was unjust, as it placed an unreasonable burden of proof on the complainants.

6.4 In applying Article 9(2)(c) the Board considered that the Law had been misinterpreted.

6.5 In applying Article 9(2)(d) the Board found the delays in bringing forward the abatement notice for the noise and any action in relation to the odours had been unreasonable.

6.6 In applying Article 9(2)(e) the Board considered that the Company's interests had been prioritised to the detriment of its neighbours.

6.7 The Board concluded that it had been unreasonable of the Department to have taken so long to take any action in respect of the odours emanating from the site, given the evidence available. The fact that there were not precedents should not have prevented action being taken. The Board considered it unacceptable that the Department had simply extended the monitoring of odours in order to meet a threshold that had already been acknowledged as unworkable.

Recommendation: It is for the Court to determine if a nuisance has occurred in the event that the alleged culprit wishes to appeal against the service of an abatement notice by the Minister. The decision by the Minister to serve such a Notice should not be based on whether he is certain that a nuisance has arisen, but rather on whether he is reasonably satisfied that on the prima facie evidence available a statutory nuisance has occurred. The Law sets out what can give rise to a nuisance, and if he is reasonably satisfied that that has occurred, that there is a consequential risk to health and that the cause is reasonably identifiable, the Notice should be served. The onus should then be on the party on which the Notice is served to prove to the Court that no nuisance has occurred or that it was not the cause. The Department has set itself a bar which is too high, and which is not required by the Statutory Nuisance Law.

6.8 The Board concurred that lengthy delays, extensions of compliance deadlines and poor communication had compounded the impression that the Department had prioritised the Company's interests over those of the complainant and her neighbours. The Board determined that the Department had taken an unreasonable amount of time to make the noise abatement order and to act on the odours.
Recommendation: When considering compliance notices and extended timeframes for implementation, the Department should give equal consideration to those impacted by the lack of compliance as they do to the practical implications for the company or property owner concerned.

6.9 The Board rejected the suggestion that the Chief Officer of Planning had been conflicted when considering the Stage 3 complaint.
Recommendation: Any response to a complainant at Stage 3 of the Government's Complaints Handling process should include a declaration that the possibility of a conflict of interest has been fully considered, and if there are any circumstances which warranted consideration, there should be a full explanation as to why those circumstances were not deemed to identify a conflict. Given that a Stage 3 is an internal review, the complainant should be entitled to this assurance that any possibility of a conflict of interest arising shall have been fully considered and discounted. If the possibility of a conflict is found to exist, an independent officer from another Department should chair the enquiry, with an explanation of the circumstances by which an actual or potential conflict was identified.

6.10 The Board was concerned about the lack of consistency in the redaction process in relation to Planning Applications.
Recommendation: A standardised approach to redaction should be published by the Department.

Signed and dated by –

G. Crill, Chair	....	Dated: ....
A. Ahmed	....	Dated: ....
S. Rowles	....	Dated: ....